IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.514 OF 2005

Narendra B. Chandan & Anr. ...Petitioners.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mr. D. B. Sawant for the Petitioners.
Mr. V.P. Malvankar, AGP for the Respondents.

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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

August 2, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. In these proceedings, it has been stated that on 2nd April 1973, the Petitioners applied to the Third Respondent for the grant of a licence in Form FL-II for the retail sale of Indian made foreign liquor under the provisions of the Bombay Prohibition Act, 1949. On 5th July

1973 and 7th October 1973, the Third Respondent is stated to have directed the Petitioners to furnish certain documents. According to the Petitioners, by a letter dated 16th October 1973, the Third Respondent was informed by them that they had attended the office of the Deputy Superintendent of Prohibition and Excise on 16th July 1973 and submitted the required documents. The aforesaid letter was, according to the Petitioners, forwarded 'Under Certificate of Posting'. On 18th March 1974, the Collector, according to the Petitioners, informed them that a Vendor's Licence for the sale of foreign liquor would be granted to them subject to the payment of the prescribed licence fee and deposit and the furnishing of certain documents. It has been stated that due to a change of policy in 1975, the State Government in exercise of the powers conferred by Section 139 of the Act, issued a notification prohibiting the grant of licence in Form FL-II and CL-III. Therefore, licences which were sanctioned in 1973-74 but which were actually not issued were withheld by the State. It has been stated that in 1984-85, Government took a decision to grant licences in those cases where licences were sanctioned earlier, but were not actually issued. The

Petitioners have stated that on 6th December 1985, they applied to the Third Respondent for revalidating the licence which was allegedly granted earlier by the letter dated 5th July 1973. On 6th July 1981, Government is stated to have issued a notification for the revalidation of licences subject to the terms and conditions stipulated therein. On 2nd August 1997, the Petitioners sought a revalidation of their licence. On 9th June 1999 they were informed by the Collector that their request could not be considered. The Petitioners thereupon filed an appeal before the Commissioner of State Excise and the application was placed before a Committee constituted at the District Level. The Committee rejected the application for revalidation which was intimated to the Petitioners by the Third Respondent on 30th August 2000. The Petitioners thereupon filed an appeal before the Second Respondent which came to be rejected on 7th February 2001. A Revision Application before the First Respondent under Section 138 was dismissed on 11th August 2004.

3. The revisional authority has noted that requests for revalidation of licences for the retail sale of foreign liquor in Form FL-

II would be considered if two conditions are fulfilled, namely, (i) that a licence had been granted for retail sale in 1973-74; and (ii) an application for revalidation was made before 17th February 1989. In the present case, it was noted that the Collector had on 5th July 1973 and 7th October 1973 called upon the Petitioners to comply with certain documents in pursuance whereof, the Petitioners had produced an Under Certificate of Posting receipt dated 17th October 1973. The revisional authority, however, was of the view that a certificate of posting was not proof of the submission of the application to the Government and, therefore, it was not clear whether a licence was in fact, granted to the Petitioners. The revisional authority held that the Petitioners were unable to produce the document of sanction or the original copy of the application dated 6th December 1985.

4. In support of the petition, it has been submitted that in a similar case, Revision No. FLR.1202/RA-22.EXC, in relation to one Mohandas Ghanshyamdas Agrawal, the revisional authority in its order dated 11th September 2004 had relied on a copy of an Under

Certificate of Posting receipt and while allowing the revision granted the licence. Moreover, it has been submitted that while revalidating other licences, the revisional authority had called for the records of the Government while in the present case, the records were not looked into, in order to confirm whether the names of the Petitioners appear in the list of persons in whose favour a decision to grant a licence had been taken. Several orders have been annexed to these proceedings at Exhs.H and I in support of the submission. These are all orders passed by the revisional authority.

5. Having heard Counsel appearing on behalf of the Petitioners and the Learned AGP, we are of the view that it would be appropriate in the facts and circumstances of this case to remand the matter back to the Third Respondent for fresh decision. There is merit in the grievance of the Petitioners that the revisional authority ought to have called for the records of the Government for the purpose of scrutinising as to whether the names of the Petitioners were borne in the list of persons to whom licences had been sanctioned. In another order dated 20th November 2003, passed by the revisional authority

(Exh.H to the Petition) in File No.FLR. 1299/RA-61/EXC-2, such an approach was adopted and it was found that the name of the concerned person appeared in the list of persons in whose case a licence for Mumbai City was sanctioned in Form FL-II for the year 1973-74. In the circumstances, in order to enable a fresh determination by the Third Respondent, we quash and set aside the impugned order dated 11th August 2004. The Third Respondent shall pass orders afresh on the application filed by the Petitioners after furnishing an opportunity to the Petitioners of being heard, preferably within a period of four months from the date on which an authenticated copy of this order is produced before the Third Respondent. We keep all rights and contentions open and nothing contained in this order should be construed as a finding by this Court on the genuineness or authenticity of the documents which are relied upon by the Petitioners. The Third Respondent shall independently verify all facts while arriving at his decision in accordance with law.

6. The petition is disposed of in the above terms. No order as to costs.

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